IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2007

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE R.REGUPATHI

Habeas Corpus Petition No.1334 of 2007

Uma Manickam .. Petitioner

Vs.

1. The Inspector of Police
   V-1, Villivakkam Police Station
   Villivakkam, Chennai.

2. Jayakumar
3. Ravikumar
4. S.R.Raja .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Habeas Corpus directing the respondents to produce Deenadayalan, Son of Balu Reddiar, aged about 54 years, now under illegal custody of the respondents before this Court and set him at liberty.

For Petitioner : Mr.Selvaraj
For Respondent-1 : Mr.N.R.Elango
Addl. Public Prosecutor

O R D E R

(Made by P.D.DINAKARAN,J.)

This petition has an unpleasant history. We are grieved at the turn of events in this case, viz., making a normal man, a mentally ill person, in order to grab his property fraudulently, by perverting or subverting the provisions of the Mental Health Act, 1987 (for brevity, "the Act") which is enacted to consolidate and amend the law relating to treatment and care of mentally ill persons, to make better provision with respect to their property and affairs and for matters connected therewith or incidental thereto.

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2.1. The facts, so far as relevant, leading to the filing of the present petition are as under:

The petitioner, claiming herself as a neighbour of the detenu – Deenadayalan has filed this habeas corpus petition seeking a writ of habeas corpus to direct the respondents to produce Deenadayalan, Son of Balu Reddiar, aged about 54 years, now under illegal custody of the respondents before this Court and set him at liberty. It is alleged that the detenu is kept under the illegal detention, under the guise of a reception order dated 24.8.2007 said to have been passed by the learned Judicial Magistrate, Tambaram, exercising the power conferred under Sections 22 and 24 of the Mental Health Act, at the instance of the third respondent herein, who is nonetheless the brother-in-law of the detenu (detenu's sister's husband) and the brother of the fourth respondent, a sitting M.L.A. of Tambaram Assembly Constituency.

2.2. In fact, the very same petitioner, on an earlier occasion, complaining that the said Deenadayalan was under the illegal detention of the third respondent herein moved H.C.P. No.1114 of 2007 seeking production of the detenu before this Court and to set the detenu at liberty. The third respondent herein contested the said H.C.P.No.1114 of 2007 submitting that the detenu was mentally retrenched and he was undergoing treatment in the Institute of Mental Health, Kilpauk.

2.3. After hearing all the parties, this Court, by order dated 9.8.2007 disposed of the said H.C.P.No.1114 of 2007, as under:

> "4. Some medical prescriptions were produced before us. We ourselves examined the detenu. The detenu has stated that he has been taken forcibly by four persons and subsequently, the second respondent had joined them. The detenu has further stated that even though, he is being treated in some Hospital, he has been treated only as an out patient and he does not have any mental derangement. We put to him general questions, for which, he answered and he appears to be a normal person. The detenu has further stated that he would not like to stay with the second respondent and he would like to stay in his own house available at Villivakkam. The detenu is set at liberty and he is free to stay, wherever he likes."

2.4. On 10.8.2007, the learned counsel who appeared for the petitioner in H.C.P.No.1114 of 2007, however, requested the Court to post the matter for being mentioned complaining that immediately after the detenu was set at liberty on 9.8.2007, on the same day evening, he was again taken by and kept under the illegal custody of the third respondent and his wife, who is nonetheless the sister of the detenu.

2.5. The matter was posted on 14.8.2007, and was adjourned to 17.8.2007 and then to 18.8.2007 at the request of the learned Additional Public Prosecutor. On 18.8.2007, as it was reported by the learned

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Additional Public Prosecutor that he was not able to obtain all necessary instructions, the H.C.P.No.1114 of 2007 was closed as under:

> " This Habeas Corpus petition had been disposed of by an order dated 9.8.2007. Thereafter, the matter was listed under the heading "for being mentioned" as the learned counsel for the petitioner stated before Court that the detenu, Deenadayalan was not available in his house at Villivakam. Learned Additional Public Prosecutor had been requested to obtain instructions on this matter. Learned Additional Public Prosecutor is not able to obtain all necessary instructions. Be that as it may, no further order is required to be passed in this habeas corpus petition. It is open to the petitioner or any other interested person to seek appropriate remedy."

2.6. As the whereabouts of the detenu were still unknown, the petitioner moved the present H.C.P.No.1334 of 2007.

3.1. When the matter came before this Court on 13.9.2007 for admission, the following order was passed:

> "Even though it is reported that the detenu, viz., Deenadayalan, has been admitted as an in-patient (I.P.No.2144, Ward No.6) in Mental Health Centre, Kilpauk, in view of the earlier order passed by a Division Bench of this Court, dated 9.8.2007 made in H.C.P.No.1114 of 2007, wherein it was found that the detenu appeared to be a normal person, we direct the respondent police to produce the detenu, after getting necessary orders from the Resident Medical Officer, Mental Health Centre, Kilpauk, before this Court by tomorrow (14.9.2007) at 10.30 a.m.
>
> 2. In the meanwhile, Registry is directed to call for a detailed report from the learned Principal District Judge, Chengalpet, with reference to an order passed by the Judicial Magistrate, Tambaram, exercising the powers contemplated under Section 22 and 24 of the Mental Health Act, referring the detenu, viz., Deenadayalan, to the Mental Health Centre, Kilpauk. The entire report along with the medical report from the Resident Medical Officer, Mental Health Centre, Kilpauk, shall be placed before this Court by tomorrow (14.9.2007) at 10.30 a.m."

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3.2. When the matter came up for further arguments today (14.9.2007), the Registrar (Judicial) produced a report dated 13.9.2007 from the learned Principal District Judge, Chengalpattu enclosing a report from the learned Judicial Magistrate, Tambaram dated 13.9.2007.

3.3. Even though the learned Additional Public Prosecutor could not get necessary instructions from the respondents/ Police on an earlier occasion, when a serious complaint was made that the detenu was under

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illegal custody of the third respondent, within 24 hours, the detenu was produced before us this morning from the Institute of Mental Health, Kilpauk supported with a reception order dated 24.8.2007 passed by the learned Judicial Magistrate, Tambaram. He also produced an Observation Report from the Director-Incharge of the Institute of Mental Health, Kilpauk.

3.4. The relevant portions of the report of the learned Judicial Magistrate dated 13.9.2007, report of the learned Principal District Judge, Chengalpattu dated 13.9.2007, and the Observation Report dated 14.9.2007 of the Director-Incharge, Institute of Mental Health, Kilpauk, read as under:

(i) Report of the learned Judicial Magistrate, Tambaram, dated 13.9.2007

> "... The above said petitioner Mr.Ravikumar filed an affidavit stating that Mr.Deenadayalan, S/o.Balu Reddy is his uncle and his age about 60 years and suffering from Mental illness for the past few years, he was also given medical treatment. In spite of the same, he was not completely cured and still he is suffering from mental illness. Therefore, he has to be admitted in the Mental Hospital for proper care and medical treatment or otherwise his health condition will become worse. Further the above said person attempted to commit suicide and throws dangerous weapons on seeing them and he also used to attack them without knowing what he was doing. Further he used to shout against persons and used to spit upon them. He also attempts to break the tube lights and bulbs and used to catch hold of the blouse of the ladies. Further he used to bring some garbage on collection from road side and use to spread them in the house which causes foul smell and affect the normal life of the inmates. Therefore, he requested to pass orders to admit the insane person Deenadayalan in the Government Institute of Mental Health and Hospital at Kilpauk, Chennai-10. The petitioner Ravikumar has sworn the affidavit as stated supra. In support of his petition, he files one Doctor's recommendation letter given by one Dr.Rameshkumar, M.B.B.S. F.A.G.E. Of Balaji Clini, No.110/A, N.M.K.Street, Ayanavaram, Chennai-23. Again, I have taken up the matter on 24.8.2007, Mr.Deenadayalan was also present in the court. I further submit that in the open court, I invited the said Deenadayalan nearby the dias, I put several questions to satisfy myself. Very often, he used to sit on the floor and complained that he could not able to stand. I further submit that more over, **he has answered to the questions in the most irrelevant manner.** He did not realise when saliva was oozing out from his mouth. The petitioner Ravikumar stated that the said Deenadayalan, is his uncle. I further submit that when I showed the petitioner to the said Deenadayalan and asked him who was he?

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He said, I do not know who is he. Upon satisfied the answers given in such a way by Mr.Deenadayalan, I prepared a letter to the Director, the Institute of Mental Health, Kilpauk, Chennai-10, vide D.No.1551/07, dated 24.8.2007. Based on which, I further submit that the Tambaram Police has registered a case u/s.23 and 27 of the Mental Health Act, 1987 in Cr.No.2388/07 against Mr.Deenadayalan received by this Court on 25.8.2007 at 1.30 p.m. **The medical custody for an observation of Mr.Deenadayalan as an inpatient given for a period of 30 days which has been passed for the interest of Health and the person concerned."**

(emphasis supplied)

(ii) Report of the learned Principal District Judge, Chengalpattu, dated 13.9.2007:

"... Upon satisfying himself the Judicial Magistrate, Tambaram has prepared a reception order u/s.22, 24 read with 25, 28, 29 of Mental Health Act, 1987 addressed to the Director, Institute of Mental Health, Kilpauk, Chennai-10 in D.No.1551/2007, dated 24.8.2007 and **the said Deenadayalan was detained in the said Institute for a period of 30 days by the Judicial Magistrate, Tambaram.** The Judicial Magistrate, Tambaram has also stated that based on that detention order the Tambaram Police has registered a case under Sec.23 and 27 of Mental Health Act, 1987 in Crime No.2388/2007 against the said Deenadayalan which was received in his court on 25.8.2007 at 1.30 p.m. **But the said detenu should have been detained for 10 days only under Section 28 of Mental Health Act, 1987 at a time and this procedure has not been followed by the Judicial Magistrate, Tambaram."**

(emphasis supplied)

(iii) Observation Report dated 14.9.2007:

"As per the reception order issued in the Court of Judicial Magistrate, Tambaram, Chennai, Mr.Deenadayalan was admitted on 24.8.2007. He was brought by Head constable Mr.Subramaniam (H.C.22961) and S.I. of Tambaram Police Station. He was accompanied by his brother in law Mr.Ravikumar.

On the day of admission he was clean and tidy. He comprehended our questions and gave personal information and address. There were no perceptual or thought disturbances. He was found to be exhibiting spontaneous and excessive talk. He has no insight about his condition. He has eczema of both legs (skin condition) for which he is being given treatment by experts.

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He was placed before admission committee on 31.8.2007.

Provisional diagnosis of bipolar affective disorder (mania) was entertained.

Currently Mr.Deenadayalan is under observation and under going psychological investigations and testings."

(emphasis supplied)

3.5. The learned Additional Public Prosecutor also produced the reception order dated 24.8.2007 issued by the learned Judicial Magistrate, Tambaram, which reads as under:

"IN THE COURT OF JUDICIAL MAGISTRATE, TAMBARAM

RECEPTION ORDER FOR CONSERVATION OF A MENTALLY ILL PERSON

(Issued u/s.22 and 24 r/w section 25 and 28 and 29 of the Mental Health Act, 1987)

1) **It is reported that a male Deenadayalan Age: 60 S/o.Balu Reddy N. 3/7, Srinivasan Street, West Tambaram, Chennai-45**

a) is a mentally ill patient
b) **is within the jurisdictional limit of the police station attached with this Court** (Cr.No.2388/07 u/s.23,27 of Mental Health Act of Tambaram P.S.)
c) is reported to be residing within the local limits of your jurisdiction.

2) He is a wandering mentally ill-patient and having no relative to give protection and safety to him.

3) I have enquired and examined him personally. I have the following reason to belief that the above said patient is not under proper care and control.

4) I reasonably believe that there is no person legally bound to maintain him.

5) I the undersigned Thiru S.Murugesan, M.Sc., B.L., Judicial magistrate, Tambaram specially empowered by the government to detain him in your psychiatric hospital for treatment as an in patient.

6) Therefore, you are hereby authorised to **receive the detention of the alleged mentally ill person under proper medical custody**

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in an observation ward of your hospital as an inpatient for a period of 30 days for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person can properly be given under clause (a) of sub-section (2) of Section 24 of the Mental Health Act, 1987.

7) This is an interim order which has been passed in the interests of the health and personal that person or for the protection of there.

8) This order shall be subject to any variation from time to time revocation at any time.

Sd/-
Judicial Magistrate
Tambaram

Place: Tambaram
Date : 24.8.07

To:

The Director
The Institute of Mental Health
Kilpauk, Chennai-10."

3.6. It is stated in the report dated 13.9.2007 submitted by the learned Judicial Magistrate, Tambaram that the detenu very often used to sit on the floor and complain that he was unable to stand; that saliva was oozing out from his mouth unknowingly; and that he was answering to the questions in an irrelevant manner on 24.8.2007.

3.7. However, we find from the Observation Report dated 14.9.2007 of the Director Incharge, Institute of Mental Health, Kilpauk that on the date of admission, viz., on 24.8.2007, when the detenu was brought by the Head Constable-Subramanian (H.C.22961) and Sub Inspector of Tambaram Police Station – Mr.Durai, accompanied by his brother-in-law, the third respondent herein; the detenu was clean and tidy; he comprehended the questions put forth by the Doctors; gave personal information and address; and there were no perceptual or thought disturbances; even though he was found to be exhibiting spontaneous and excessive talk, he had no insight about his condition; he had only eczema on both legs (skin condition) for which he was being given treatment by experts.

3.8. Even though, we have not summoned any Doctor from the Institute of Mental Health, Kilpauk, Dr.Anand Pratap, who is Ward Incharge appeared before this Court voluntarily and stated that the detenu was improving in mental condition. We are unable to understand under what circumstances or background Dr.Anand Pratap has chosen to make the above statement.

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3.9. From the clinical record of the detenu, observation report, as well as the report of the learned Principal District Judge, Chengalpattu and the learned Judicial Magistrate, Tambaram, and the Reception Order, it is apparent that the learned Judicial Magistrate, Tambaram, by passing the reception order dated 24.8.2007 directing the Director of Institute of Mental Health, Kilpauk to detain the alleged mentally ill person for a period of 30 days in paragraph (6) of the order, committed a serious error in law, as, Section 28(2) of the Act contemplates that the Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorise such further detention of the alleged mentally ill person for periods not exceeding ten days at a time.

3.10. That apart, as per the Observation Report and the Clinical Record, there is no need to admit the detenu as an inpatient in the Institute of Mental Health, Kilpauk by the Doctor concerned on 24.8.2007.

3.11. Under such circumstances, we felt that before arriving at any finding, it is apt to call for the original records from the learned Judicial Magistrate, Tambaram as well as the original records relating to Crime No.2388 of 2007 on the file of the Inspector of Police, Tambaram and the entire medical records relating to the detenu from the Institute of Mental Health, Kilpauk and the matter was taken up at 2.30 pm.

4.1. In view of the observation of the earlier Division Bench in the order dated 9.8.2007 made in H.C.P.No.1114 of 2007 that the detenu appeared to be a normal person, at 2.30 p.m., we put several questions to the detenu in the open court and he was answering all the questions clearly and cogently without any dilemma whatsoever.

4.2. The detenu thus stated that immediately after setting him at liberty on 9.8.2007 pursuant to the order of the Division Bench of this Court dated 9.8.2007 made in H.C.P.No.1114 of 2007, he was taken on custody by the third respondent and his wife, and was left at Madambakkam Orphanage having telephone number 22781060. He was then taken to S-16 Police Station by the third respondent and from there he was produced before the Judicial Magistrate, Tambaram on 24.8.2007 by the third respondent and from there he was taken to Institute of Mental Health at Kilpauk and today, the first respondent/Police produced him before this Court.

4.3. As per the records produced from the learned Judicial Magistrate, Tambaram, it is evident that the petition under Sections 23 and 27 of the Act was filed by the third respondent herein. The petition was moved by one Mr.M.Ramesh, counsel on behalf of the third respondent. The petition was prepared on 20.8.2007, and thereafter a correction was made to the date as 22.8.2007 and filed on 22.8.2007. Notice was ordered on 22.8.2007 returnable by 24.8.2007. On 24.8.2007, the learned Additional Public

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Prosecutor made the following endorsement:

> "Perused the affidavit and petition. If the alleged person appears to be lunatic the learned Magistrate can directly pass a order to Home to take him for treatment to verify the same put some common questions to said lunatic person. If doubt arises send him for medical officer then pass suitable order."

4.4. It is apparent on the face of the record that the notice was not served on the Director, Institute of Mental Health, Kilpauk, Chennai, even though he was made as a party respondent and notice was ordered to him on 22.8.2007 returnable by 24.8.2007

5.1. Under the scheme of the Act, while Chapter IV – Part III(A) (*Sections 20 to 22*) prescribes the procedure to be followed for disposing an application for a reception order made by the Medical Officer in charge of a psychiatric hospital or psychiatric nursing home, or by the husband, wife or any other relative of the mentally ill person, Part III(B) (*Sections 23 to 25*) of Chapter-IV deals with the procedure to be followed when a mentally ill person is produced by the Police concerned, Part III (C) (*Sections 26 to 29*) of Chapter-IV deals with the provisions regarding admission and detention of certain mentally ill persons, and Part III(D) (*Sections 30 to 36*) of Chapter-IV deals with miscellaneous provisions relating to the procedure to the followed while passing reception orders under this Chapter.

5.2. For better appreciation of the statutory framework, it is apposite to refer Sections 20 to 30 of the Act, which read as under:

> "**Section: 20 - Application for reception order:**
> (1) An Application for a reception order may be made by -
>
> (a) the medical officer in charge of a psychiatric hospital or psychiatric nursing home, or
> (b) by the husband, wife or any other relative of the mentally ill person.
>
> (2) Where a medical officer in charge of a psychiatric hospital or psychiatric nursing home in which a mentally ill person is undergoing treatment under a temporary treatment order is satisfied that -
>
> (a) the mentally ill person is suffering from mental disorder of such a nature and degree that his treatment in the psychiatric hospital or, as the case
> may be, psychiatric nursing home is required to be continued for more than six months, or
> (b) it is necessary in the interests of the health and

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personal safety of the mentally ill person or for the protection of others that such person shall be detained in a psychiatric hospital or psychiatric nursing home, he may make an application to the Magistrate within the local limits of whose jurisdiction the psychiatric hospital or, as the case may be, psychiatric nursing home is situated, for the detention of such mentally ill person under a reception order in such psychiatric hospital or psychiatric nursing home, as the case may be.

(3) Subject to the provisions of sub-section (5), the husband or wife of a person who is alleged to be mentally ill or, where there is no husband or wife, or where the husband or wife is prevented by reason of any illness or absence from India or otherwise from making the application, any other relative of such person may make an application to the Magistrate within the local limits of whose jurisdiction the said person ordinarily resides, for the detention of the alleged mentally ill person under a reception order in a psychiatric hospital or psychiatric nursing home.

(4) Where the husband or wife of the alleged mentally ill person is not the applicant, the application shall contain the reasons for the application not being made by the husband or wife and shall indicate the relationship of the applicant with the alleged mentally ill person and the circumstances under which the application is being made.

(5) No person, -
(i) who is a minor, or
(ii) who, within fourteen days before the date of the application, has not seen the alleged mentally ill person,
shall make an application under this section.

(6) Every application under sub-section (3) shall be made in the prescribed form and shall be signed and verified in the prescribed manner and shall state whether any previous application had been made for inquiry into the mental condition of the alleged mentally ill person and **shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government.**

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Section: 21 - Form and contents of medical certificates:

Every medical certificate referred to in sub-section (6) of section 20 shall contain a statement.

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(a) that **each of the medical practitioners** referred to in that sub-section **has independently examined the alleged mentally ill person** and has formed his opinion on the basis of his own observations and from the particulars communicated to him; and

(b) that in the opinion of each such medical practitioner the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home and that **such detention is necessary in the interests of the health and personal safety of that person or for the protection of others**.

Section: 22 - Procedure upon application for reception order:

(1) On receipt of an application under sub-section (2) of section 20, the Magistrate may make a reception order, if he is satisfied that -

(i) the mentally ill person is suffering from mental disorder of such a nature and degree that it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment; or
(ii) it is necessary in the interests of the health and personal safety of the mentally ill person or for the protection of others that he should be so detained, and a temporary treatment order would not be adequate in the circumstances of the case end it is necessary to make a reception order.

(2) On receipt of an application under sub-section (3) of section 20, the Magistrate shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates.

(3) If the Magistrate considers that there are sufficient grounds for proceeding further, **he shall personally examine the alleged mentally ill person unless, for reasons to be recorded in writing, he thinks that it is not necessary or expedient to do so.**

(4) If the Magistrate is satisfied that a reception order may properly be made forthwith, he may make such order, and **if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he**

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thinks fit.

(5) **The notice of the date fixed** under sub-section (4) shall be given to the applicant and **to any other person to whom,** in the opinion of the Magistrate, such notice shall be given.

(6) If the magistrate fixes a date under sub-section (4) for further consideration of the application, he may make such order as he thinks fit, for the proper care and custody of the alleged mentally ill person pending disposal of the application.

(7) **On the date fixed under sub-section (4), or on such further date** as may be fixed by the Magistrate, he shall proceed to consider the application in camera, in the presence of –

(i) the applicant;
(ii) the alleged mentally ill person (unless the Magistrate in his discretion otherwise directs);
(iii) **the person who may be appointed by the alleged mentally ill person to represent him;** and
(iv) such other person as the Magistrate thinks fit, and if the Magistrate is satisfied that the alleged mentally ill person, in relation to whom the application is made, is so mentally ill that in the interests of the health and personal safety of that person or for the protection of others it is necessary to detain him in a psychiatric hospital or psychiatric nursing home for treatment, he may pass a reception order for that purpose and if he is not so satisfied, he shall dismiss the application and any such order may provide for the payment of the cost of the inquiry by the applicant personally or from out of the estate of the mentally ill person, as the Magistrate may deem appropriate.

(8) If any application is dismissed under sub-section (7), the Magistrate shall record the reasons for such dismissal and a copy of the order shall be furnished to the applicant.

Section: 23 - Powers and duties of police officers in respect of certain mentally ill persons:

(1) Every Officer in charge of a police station,-
(a) may take or cause to be taken into protection any person found wandering at large **within the limits of his station** whom he has reason to believe to be so mentally ill as to be incapable of taking care of himself, and
(b) shall take or cause to be taken into protection any

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person within the limits of his station whom he has reason to believe to be dangerous by reason of mental illness.

(2) No person taken into protection under sub-section(1) shall be detained by the police without being informed , as soon as may be, of the grounds for taking him into such protection, or where in the opinion of the officer taking the person into protection, such person is not capable of understanding those grounds, without his relatives or friends, if any, being informed of such grounds.

(3) Every person who is taken into protection and detained under this section **shall be produced before the nearest Magistrate within a period of twenty four hours of taking him** into such protection excluding the time necessary for the journey from the place where he was taken into such protection to the Court of the Magistrate and **shall not be detained beyond the said period without the authority of the Magistrate.**

Section: 24 - Procedure on production of mentally ill person:

(1) If a person is produced before a Magistrate under sub-section(3) of section 23, and if, in his opinion, there are sufficient grounds for proceeding further, the Magistrate shall-

(a)examine the person to assess his capacity to understand,
(b)**cause him to be examined by a medical officer**, and
(c)make such inquiries in relation to such person as he may deem necessary.

(2) After the completion of the proceedings under sub-section (1), the Magistrate may pass a reception order authorizing the detention of the said person as an inpatient in a psychiatric hospital or psychiatric nursing home, -

(a)if the medical officer certifies such person to be a mentally ill person, and
(b)if the Magistrate is satisfied that the said person is a mentally ill person and that in the interests of the health and personal safety of that person or for protection of others, it is necessary to pass such order.

Provided that if any relative or friend of the mentally ill person desires that the mentally ill person be sent to any particular licensed psychiatric hospital or licensed psychiatric nursing home for treatment therein and undertakes

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in writing to the satisfaction of the Magistrate to pay the cost of maintenance of the mentally ill person in such hospital or nursing home, the Magistrate shall, if the medical officer in charge of such hospital or nursing home consents, make a reception order for the admission of the mentally ill person into that hospital or nursing home and detention therein:

Provided further that if any relative or friend of the mentally ill person enters into a bond, with or without sureties for such amount as the Magistrate may determine, undertaking that such mentally ill person will be properly taken care of and shall be prevented from being any injury to himself or to others, the Magistrate may, instead of making a reception order, hand him over to, the care of such relative or friend.

Section: 25 - Order in case of mentally ill person cruelly treated or not under proper care and control:

(1) Every officer in charge of a police station, who has reason to believe that any person within the limits of his station is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, shall forthwith report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(2)Any private person who has reason to believe that any person is mentally ill and is not under proper care and control, or is ill-treated or neglected by any relative or other person having charge of such mentally ill person, may report the fact to the Magistrate within the local limits of whose jurisdiction the mentally ill person resides.

(3) If it appears to the Magistrate, on the report of a police officer or on the report or information derived from any other person, or otherwise that any mentally ill person within the local limits of his jurisdiction is not under proper care and control, or is ill-treated or neglected by any relative or other person having the charge of such mentally ill person, the Magistrate may cause the mentally ill person to be produced before him, and summon such relative or other person who is, or who ought to be in charge of, such mentally ill person.

(4) If such relative or any other person is legally bound to maintain the mentally ill person, the Magistrate may, by

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order, require the relative or the other person to take proper care of such mentally ill person and where such relative or other person willfully neglects to comply with the said order, he shall be punishable with fine which may extend to two thousand rupees.

(5) If there is no person legally bound to maintain the mentally ill person, or if the person legally bound to maintain the mentally ill person refuses or neglects to maintain such person, or if, for any other reason, the Magistrate thinks fit so to do, he may cause the mentally ill person to be produced before him and, without prejudice to any action that may be taken under sub-section (4), proceed in the manner provided in section 24 as if such reason had been produced before him under sub section (3) of section 23.

Section:26 - Admission as inpatient after inquisition:

If any District Court holding an inquisition under Chapter VI regarding any person who is found to be mentally ill is of opinion that it is necessary so to do in the interests of such person, it may, by order, direct that such person shall be admitted and kept as an inpatient in a psychiatric hospital or psychiatric nursing home and every such order may be varied from time to time or revoked by the District Court.

Section:27 - Admission and detention of mentally ill prisoner:

An order under section 30 of the Prisoners Act, 1900, or under section 144 of the Air Force Act, 1950, or under section 145 of the Army Act, 1950, or under section 143 or section 144 of the Navy Act, 1957, or under section 330 or section 335 of the Code of Criminal Procedure, 1973, directing the reception of a mentally ill prisoner into any psychiatric hospital or psychiatric nursing home, shall be sufficient authority for the admission of such person in such hospital or psychiatric nursing home to which such person may be lawfully transferred for detention therein 3 of 1990, 45 of 1950, 46 of 1950, 62 of 1957, 2 of 1974

Section: 28 - Detention of alleged mentally ill person pending report by medical officer:

(1) When any person alleged to be a mentally ill person

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appears or is brought before a Magistrate under section 23 or section 25, the Magistrate may, by order in writing, authorize the detention of the alleged mentally ill person under proper medical custody in an observation ward of a general hospital or general nursing home or psychiatric hospital or psychiatric nursing home or in any other suitable place for such period not exceeding ten days as the Magistrate may consider necessary for enabling any medical officer to determine whether a medical certificate in respect of that alleged mentally ill person may properly be given under clause (a) of sub-section (2) of section 24.

(2) The Magistrate may, from time to time, for the purpose mentioned in sub-section (1), by order in writing, authorize such further detention of the alleged mentally ill person for periods not exceeding ten days at a time as he may deem necessary.

Provided that no person shall be authorized to be detained under this sub-section for a continuous period exceeding thirty days in the agreeable.

Section: 29 - Detention of mentally ill person pending his removal to psychiatric hospital or psychiatric nursing home:

Whenever any reception order is made by a Magistrate under section 22, section 24 or section 25, he may, for reasons to be recorded in writing, direct that the mentally ill person in respect of whom the order is made may be detained for such period not exceeding thirty days in such place as he may deem appropriate, pending the removal of such person to a psychiatric hospital or psychiatric nursing home.

Section: 30 - Time and manner of medical examination of mentally ill person:

Where any order under this Chapter is required to be made on the basis of a medical certificate, such order shall not be made unless the person who has signed the medical certificate, or where such order is required to be made on the basis of two medical certificates, the signatory of the respective certificates, has certified that he has personally examined the alleged mentally, ill person,

(i) in the case of an order made on an application, not earlier than ten near days immediately before the date on

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which such application is made; and
(ii) in any other case, not earlier than ten clear days immediately before the date of such order:

Provided that where a reception order is required to be made on the basis of two medical certificates such order shall not be made unless the certificates show that the signatory of each certificate examined the alleged mentally ill person independently of the signatory of the other certificate."

5.3. In the instant case, the reception order was not passed on production of the mentally ill person by the Police attracting the procedure contemplated under Part III(B) of Chapter IV, viz., Sections 23 to 25. Concededly, the reception order was passed by the learned Judicial Magistrate, Tambaram on an application filed by the third respondent, the brother-in-law of the detenu. Of course, the application was also supported with a medical certificate dated 18.8.2007 issued by Dr.M.Ramesh Kumar of Balaji Clinic, New No.140, N.M.K.Street, Ayanavaram, Chennai - 600 023. However, strangely, the application was filed under Section 23 of the Act for an order under Section 27 of the Act. As already pointed out, Section 23 of the Act is applicable only in the case of production of the mentally ill person before the Magistrate by the Officer incharge of the jurisdiction police station, but not in the case of an application filed by the close relatives of the mentally ill person.

5.4. Be that be, the learned Judicial Magistrate, Tambaram ought to have seen that the requirements under Section 20(6) of the Act, viz., the application shall be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government, and the procedure contemplated under Sections 21 and 22 of the Act are mandatory in nature. Section 21 of the Act prescribes the contents of the medical certificates, viz., each of the medical practitioners should have:

(i) independently examined the alleged mentally ill person;
(ii) formed his opinion on the basis of his own observations and from the particulars communicated to him;
(iii) opined that the alleged mentally ill person is suffering from mental disorder of such a nature and degree as to warrant the detention of such person in a psychiatric hospital or psychiatric nursing home; and

(iv) opined that such detention is necessary in the interests of the health and personal safety of that person or for the protection of others.

5.5. We perused the records produced before us from the file of the learned Judicial Magistrate, Tambaram. There is only one medical certificate dated 18.8.2007 issued by Dr.M.Ramesh Kumar of Balaji Clinic, New No.140, N.M.K.Street, Ayanavaram, Chennai - 600 023. Therefore,

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apparent on the the face of the records, the mandatory procedure contemplated under Sections 20(6) and 21 of the Act is not complied with, viz., two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government, are not furnished. This went unnoticed by the learned Judicial Magistrate, Tambaram. That apart, a perusal of the the medical certificate dated 18.8.2007 issued by Dr.M.Ramesh Kumar of Balaji Clinic, New No.140, N.M.K.Street, Ayanavaram, Chennai – 600 023 reveals that initially the age of the detenu was stated as 16 and then struck down and written as 60 years, which throws a doubt as to whether the Doctor had examined the detenu at all as per the procedure contemplated under Section 30 of the Act.

5.6. A close reading of Section 22 of the Act makes it clear that, on compliance of the requirements contemplated under Section 20 of the Act, in particular Section 20(6) of the Act, and Section 21 of the Act, if the Magistrate satisfies, he shall consider the statements made in the application and the evidence of mental illness as disclosed by the medical certificates and if there are sufficient grounds for proceeding further, he shall personally examine the alleged mentally ill person and pass the reception order.

5.7. In the case on hand, only one medical certificate dated 18.8.2007 issued by Dr.M.Ramesh Kumar of Balaji Clinic, New No.140, N.M.K.Street, Ayanavaram, Chennai – 600 023 was furnis hed along with the application. Even in the said medical certificate dated 18.8.2007, Dr.M.Ramesh Kumar of Balaji Clinic, New No.140, N.M.K.Street, Ayanavaram, Chennai – 600 023 has not certified that he has personally examined the detenu as contemplated under Section 30 of the Act. Therefore, the requirements contemplated under Sections 20(6) and 21 read with Section 30 of the Act had been grossly violated.

5.8. The latter limb of Section 22(4) of the Act provides that if the Magistrate is not so satisfied, he shall fix a date for further consideration of the application and may make such inquiries concerning the alleged mentally ill person as he thinks fit, and Section 22(5) of the Act provides that the notice of the date fixed under Section 22(4) of the act shall be given to the applicant and to any other person. Assuming the learned Magistrate, had ordered notice on 22.8.2007 to the Director, Institute of Mental Health, Kilpauk, Chennai, for such further enquiry and fixed the further date of hearing as 24.8.2007 for consideration of the application under Sections 22(4) and 22(5) of the Act, he ought to have ensured the service of notice on the Director, Institute of Mental Health, Kilpauk, Chennai and waited for his medical opinion for passing the reception order.

5.9. The procedure contemplated under Section 28 of the Act is applicable in both cases, viz., when an application for reception order is made by the Medical Officer, by the husband, wife or any other relative of

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the alleged mentally ill person as provided under Sections 20 to 22 of the Act, or when the alleged mentally ill person is produced before the Magistrate under Sections 23 to 25 of the Act. In either case, as per Section 28(2) of the Act, the Magistrate may, from time to time, for the purpose mentioned in Section 28(1) of the Act, by order in writing, authorize such further detention of the alleged mentally ill person for periods not exceeding ten days at a time as he may deem necessary. However, no person shall be authorized to be detained under this sub-section for a continuous period exceeding thirty days, as per proviso to Section 28(2) of the Act. Therefore, again there is a lapse on the part of the learned Judicial Magistrate, Tambaram, for having passed a reception order for thirty days continuously, as rightly pointed out by the learned Principal District Judge, Chengalpattu in his report dated 13.9.2007.

5.10. A closure comparative analysis of Part III(A) and III(B) in the context of Section 30 of the Act makes it clear that while Part III(A) of Chapter-IV prescribes that an application for a reception order made by the Medical Officer in charge of a psychiatric hospital or psychiatric nursing home, or by the husband, wife or any other relative of the mentally ill person has to be accompanied by two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government, and the signatory of the respective certificates have to certify that they have personally examined the alleged mentally ill person as per Section 30 of the Act, Part III(B) of Chapter-IV of the Act deals with the procedure to be followed when a mentally ill person is produced by the Police concerned, whereunder, the Magistrate has to get the opinion from a Medical Practitioner, who shall certify that he has personally examined the alleged mentally ill person. In short, Part III(A) of Chapter-IV of the Act requires two medical certificates from two medical practitioners of whom one shall be a medical practitioner in the service of Government, and Part III(B) of Chapter-IV of the Act requires a medical certificate from the medical practitioner, as evident from Section 30 of the Act. This requirement under law had not been properly appreciated by the learned Judicial Magistrate.

6.1. It was also brought to our notice by the learned Additional Public Prosecutor that the bonafide of the petitioner is also questionable as, even though she claims to be a neighbour of the detenu, she is the wife of a life convict, who is undergoing his sentence.

6.2. Since the case involves corrupt practice adopted in detaining the detenu illegally, taking recourse to the provisions of the Act, and we are of the considered opinion that the core and the central issue appears to be an attempt to grab the property of the detenu, into which we do not propose to go in detail in the above H.C.P.No.1334 of 2007, except to record our serious concern, we deem it fit to refer the further investigation with regard to the entire issue to Mr.Thukkaiandi, Joint Director, Special Investigation Team, Directorate of Vigilance and Anti-

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corruption, Chennai, ***this Court, a sentinel of the people's rights, cannot close its eyes to matters which strictly do not fall within the realm of law, or in cases where law is thrown to winds and those who are expected to obey, observe and follow law, decide to violate it.***

6.3. We direct the learned Additional Public Prosecutor to hand over all the files relating to the case from the files of (i) Tambaram Police Station; and (ii) Director, Institute of Mental Health, to the Investigating Officer.

6.4. As far as the records relating to C.M.P. No.4215 of 2007 on the file of the learned Judicial Magistrate, Tambaram are concerned, the same shall be in the custody of the learned Chief Judicial Magistrate, Chengalpattu, and as and when any information is sought for by the Investigating Officer, authenticated copies of the documents shall be furnished.

6.5. After detailed investigation, the Investigating Officer shall, ferret out the truth, submit his report expeditiously, in any event, within three months from the date of receipt of copy of this order. The Investigating Officer, on the basis of the final report, shall, by himself, take action in accordance with law against all the erred persons, except the Judicial Officer, strictly following the procedure contemplated under law.

6.6. A copy of the final report with authenticated copy of all materials of the investigation shall be forwarded to the Registrar General, who shall place the same before the Hon'ble Chief Justice to initiate necessary disciplinary action against the learned Judicial Magistrate, Tambaram, if it is so required, in accordance with law.

6.7. We are satisfied that the detenu suffered illegal detention as he is a normal person, as also so opined and recorded in the earlier order dated 9.8.2007 made in H.C.P.No.1114 of 2007, and hence, the detenu is set at liberty forthwith.

7. As the learned Additional Public Prosecutor has raised suspicion as to the bona fide of the petitioner, we direct the Investigating Officer to give appropriate direction to the local Police concerned to take care of the safety of the detenu and his property. If any assistance is required from the Tamil Nadu State Legal Services Authority, Chennai in this regard, the same shall be provided to him by the Member Secretary, Tamil Nadu State Legal Services Authority, Chennai.

8. Before concluding, we record our appreciation for the valuable assistance rendered by Mr.Selvaraj, learned counsel and Mr.N.R.Elango, learned Additional Public Prosecutor in disposing the above habeas corpus

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petition.

The habeas corpus petition is allowed with the above directions.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

sasi

To
1. The Member Secretary
   Tamil Nadu State Legal Services
   Authority,Chennai.

2. The Inspector of Police
   V-1, Villivakkam Police Station
   Villivakkam, Chennai.

3. The Public Prosecutor
   High Court, Madras.

+ 2 CCs To Ms.M.Chithra Gomathy, Advocate SR NO.57761, 57663

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gp/1.10.

HCP No.1334 of 2007

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